

NINE STEPS TO INTERNATIONALISE A TAX LAW CURRICULUM: DISCUSSING ANOTHER COUNTRY'S LAWS

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I. INTRODUCTION

Today about 70 million people live in countries other than their place of origin.¹ Australia has changed from a nation that was once populated in the majority by Europeans to one whose population includes people from around 200 different countries.² In this context, the Melbourne Declaration on Educational Goals for Young Australians has acknowledged that 'new and exciting opportunities for Australians are emerging. This heightens the need to nurture an appreciation of, and respect for, social, cultural and religious diversity.'³

Many universities have made commitments to move towards curriculums with more of an international flavour.⁴ In a survey conducted by the International Association of Universities in 2006, 73 per cent of institutions reported giving internationalisation a high priority.⁵

This move by universities towards curriculums with greater international content, designed to develop students' intercultural understanding, is also placing pressure on law schools to adopt this approach. However, law subjects in Australia have traditionally been taught from a domestic perspective. Richard Johnstone and Sumitra Vignanendra have noted that '[c]omparative law and international law are not given much emphasis by many law schools'.⁶

Some universities offer a limited number of comparative law subjects as elective subjects. However, core law subjects generally lack discussion of how Australian laws interrelate with the laws of other countries.⁷ To maintain relevance, law subjects need to be internationalised, giving students an insight into how clients may face issues that involve the laws of other countries.

Adding an international dimension to curriculums that previously considered only Australian laws may appear a daunting task. Nevertheless, it is important as future law graduates are increasingly likely to come across clients and colleagues who display not only cultural

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1 Raya Jayaraman, 'Inclusion and Exclusion: An Analysis of the Australian Immigration History and Ethnic Relations' (2000) 34(1) *Journal of Popular Culture* 135.

2 *Australia: A Culturally Diverse Society* (2008) Australian Government Department of Foreign Affairs and Trade about Australia <http://www.dfat.gov.au/facts/culturally_diverse.html> at 23 January 2011.

3 *Melbourne Declaration on Educational Goals for Young Australians* (2008) Ministerial Council on Education, Employment, Training and Youth Affairs. <http://www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf> at 23 January 2011.

4 An example of the sort of commitment made by Universities is the RMIT Strategic Plan in which a commitment has been made, '[to] education and research that builds understanding by practical investigation, by designing for the problems it encounters in the world around it ... building a 'global passport' for students and ensuring that research agendas are global in their conception': *RMIT 2010 Strategic Plan: Designing the Future* (2010) RMIT University <<http://mams.rmit.edu.au/wkxbw15ps86fz.pdf>> at 23 January 2011.

5 *Internationalisation: A Research Agenda* (2010) University World News <<http://www.universityworldnews.com/article.php?story=20081017101149606>> at 23 January 2011.

6 Richard Johnstone and Sumitra Vignanendra, *Learning Outcomes and Curriculum Development in Law* (2003) 464.

7 International Legal Services Advisory Council, *Internationalisation of the Australian Law Degree: A Report Analysing the Need to Promote an Internationalised Legal Education in Australia That Prepares Graduates for the Provision of Legal Services in a Global Market* (2004) 3.

differences, but may also expect a global perspective on legal issues. Alberto Bernabe-Riefkohl has written that '[t]he attorneys of the future will have to show sensitivity and understanding of cultural differences, qualities that must be developed early in their education'.⁸ Ault and Arnold have also explained how, by introducing a comparative dimension, materials 'can be used to enrich the classroom discussion of domestic problems'.⁹ Thuronyi has discussed how '[a] better understanding of modes of thought and prevailing opinions in other countries can lead to a better appreciation of one's own system'.¹⁰ This work addresses those concerns by providing a practical model for adding an international dimension into a law curriculum subject.¹¹

This paper puts forward model changes that can be made to a law curriculum so as to emphasise the consideration of international legal issues by students. This paper also suggests ideas for developing discussion around advising clients from other cultures. Adopting the model would require making some changes to a few of the topics taught in a semester-long subject and would involve adding approximately one week's worth of new content to the curriculum. Revising what can be summarised or removed from an existing curriculum would allow ample space for the additional material required by the model.

The model involves a simple nine-step approach to changing a law unit curriculum. The discussion of the steps is undertaken with reference to changes that could be made to the way that the Australian taxation law curriculum is generally taught at Universities. This is a relevant curriculum to discuss as Thuronyi has written that '[m]ore and more often practitioners find themselves dealing with the tax laws of other countries',¹² illustrating the importance of this subject being internationalised.

By making changes to a few topics taught in a subject over one semester, materials can be modified to bring more of a global perspective and an awareness of how people are increasingly being affected by other countries' laws. The law teacher can assess students on the new curriculum by following the model assessment rubric in the appendix to this paper.

This paper posits that the nine steps to internationalising a law curriculum are:

1. choosing another country's laws to discuss with students;
2. changing the course materials;
3. assessing students on knowledge gained;
4. facilitating a discussion of cultural differences;
5. preparing students to interview a hypothetical client;
6. preparing students to advise a hypothetical client;
7. the assessment activity;
8. students reflecting on the experience gained; and
9. assessment (with a model assessment rubric).

The steps are provided in the order in which teachers would generally modify their materials. Steps 1 and 2 take a law teacher through how to change their curriculum. Step 3 outlines what to prepare students for in terms of assessment. Steps 4–6 outline activities the teacher can facilitate to prepare students for their assessment tasks. Step 7 provides more detail about the assessment activity, step 8 provides details for facilitating a discussion of how students found the assessment activity, and step 9 provides a model assessment rubric that teachers can use to

⁸ Alberto Bernabe-Riefkohl, 'Tomorrow's Law Schools: Globalization and Legal' (1995) *San Diego Law Review* 153.

⁹ Ault, J Hugh and Brian J Arnold, *Comparative Income Taxation* (3rd ed, 2010) xxv–xxvi.

¹⁰ Victor Thuronyi, *Comparative Tax Law* (2003) xiv.

¹¹ The model discussed in this paper is based on discussions which took place with a small group of about 10 Juris Doctor students who were taught the modified Australian Taxation Law curriculum in three hour seminars once per week over the semester. The modifications fitted into the first three topics of Australian Taxation Law taught during the semester (Introduction to Tax Law, Residence and Source).

¹² Victor Thuronyi, above n 10, 1.

grade their students. The assessment tasks are designed around preparing and assessing students on their advice to a hypothetical client about the laws of another country.

Each step is explained in general terms and then using a specific country to provide an example of how it can be applied. Malaysia was chosen as the example to be applied in this paper as it is one of Australia's major trading partners and is therefore one of the countries whose laws students may be exposed to in the future.¹³ It is envisaged that, when adjusting their curriculum, teachers would choose the most relevant country (or countries) for their own discussion with students, and apply the same considerations discussed in this paper.

II. STEP 1: CHOOSING ANOTHER COUNTRY'S LAWS TO DISCUSS WITH STUDENTS

A simple way to introduce an international element to a domestic tax law course is to compare Australia's laws with those of another country. There are two potential criticisms of this approach. One is that the legal materials from the other country are uprooted and potentially taken out of context. The other is that students will acquire only external knowledge about the other country's tax system, rather than gaining a deep understanding of it. However, this approach is justified in context, as an in-depth knowledge of the other country's laws is not required. Catherine Valcke has argued that '[t]he introduction of uprooted foreign legal materials is legitimate and can be helpful'.¹⁴ Helpful, not only in illustrating the concept of different approaches in a global framework, but also, through contrast and comparison, students develop a deeper understanding of their own country's laws.

On selecting which country's laws to discuss, Matthew C Mirrow has written that '[i]f an institution has already established ties to a particular region or country, it seems appropriate that materials from these geographic regions be selected'.¹⁵ Similarly, Afshin A-Khavari has written that '[a] law school's financial and human capital is crucial in developing its internationalisation strategies for its curriculum'.¹⁶ Teachers following this model should have regard to whether their university has exchange programs with other countries, whether the teacher has experience in conducting service teaching in another country, or knowledge and experience of the laws of a particular country gained in other ways. If the teacher has experience with another country's laws, this would make changes to the curriculum and the subsequent teaching easier. However, there is no great teaching difficulty where a curriculum focuses only on one element of another country's laws.

III. STEP 2: CHANGING THE COURSE MATERIALS

Teachers following this model should select a small part of their course that lends itself to some discussion of comparative law. In most cases, inserting some comparative analysis into the materials for one or two topics is enough to give students an idea of how potential clients might ask about the laws of other countries. The importance of understanding that culture is an element in working with clients can be illustrated to students by using examples like the following: a business client who is considering incorporating the business in another country; a client who wants to know how to apply for a patent in another country; a client who has recently travelled overseas who wants information about the procedure for finding someone guilty of a particular criminal offence; and a client of a family law practice who wants to know about family law in their ex-partner's country of origin.

¹³ The Joint Standing Committee on Foreign Affairs, Defence and Trade has reported that 'Malaysia is Australia's third largest partner in ASEAN 1': Joint Standing Committee on Foreign Affairs, Defence and Trade Foreign Affairs Sub-Committee, *Australia's Relationship with Malaysia* (2007) 1.

¹⁴ Catherine Valcke, 'Global Teaching' (2004) 54(2) *Journal of Legal Education* 175. Of course, if a teacher was considering this model for an elective subject they could also explore extending discussion of Australian laws and another country's laws to a discussion of the different international families of tax law: Thuronyi, above n 10, 23-5.

¹⁵ Matthew C Mirrow, 'Globalizing Property: Incorporating Comparative and International Law into First Year Property Classes' (2004) 54 *Journal of Legal Education* 188.

¹⁶ Afshin A-Khavari, 'The Opportunities and Possibilities for Internationalising the Curriculum of Law Schools in Australia' (2006) 16 (1 & 2) *Legal Education Review* 75.

This hypothetical scenario exercise, using one country and its relevant laws, will make a useful contribution to students' skills and understanding of the international context of legal issues. A semester-long subject does not allow for detailed examination of another country's laws. However, it does provide opportunities to look at specific parts of such laws and provide students with an overview of how two countries' laws can be quite different, and the nature of those differences. Below is a discussion of how teachers following this model could make references to Malaysian tax laws in the context of delivering an Australian taxation law subject.

The first step for a teacher internationalising their curriculum is to identify a topic, or topics, currently being taught that lend themselves to being internationalised. Australian Taxation Law is an introductory tax subject taught to students at RMIT over the duration of one semester. In this subject emphasis is often placed on teaching students about domestic tax laws. However, the laws of other countries are having increasing tax implications for Australian residents (for example, if an Australian works or invests money overseas). Similarly, greater numbers of non-residents of Australia are increasingly becoming liable to pay tax under Australian tax laws. Such situations require a legal practitioner to establish which country a person is a resident of, for tax purposes, and where the source of their income is — these concepts are currently taught in the tax curriculum. Students' understanding of these tax topics would be enhanced if there was more practical discussion of how these issues would be determined using the laws of an exemplar country. Below are some ideas of how this could be done, using Malaysia as the example country.

To give students an introduction to how a hypothetical client could be affected by an example country's laws, introductory materials could be modified to include a brief summary of the main features of one aspect of that country's legal system. For example, in the tax context, students could gain an understanding of how Australian residents could be affected by Malaysian tax laws and how non-resident Malaysians could be affected by Australian tax laws. Introductory materials could be modified to explain that, while in the Australian context there are both statutory laws and common law, in Malaysia the tax law is purely a creature of statute. This would give students a more in-depth understanding of Australian tax laws and also an understanding of how these might be different to the tax laws of other countries.

In the Australian tax law context, materials about the topic of residence could also be modified. Current tax law textbooks explain that the Australian tests for calculating whether someone is a resident, for tax purposes, essentially involve questions of fact and degree, based on qualitative tests developed by the courts. These include looking at how the taxpayer carries out his or her life, and his or her history of movements.¹⁷ The Australian tests are quantitative only in the sense that a person is presumed to be a resident if present in Australia for 183 days or more during an income year. Additionally, that person can prove that his or her usual place of residence is outside Australia, and that he or she does not intend to take up residence in Australia.¹⁸ On the other hand, the Malaysian test for deciding whether a person is a resident in Malaysia is entirely quantitative. The person will be defined as a resident for tax purposes simply if the person spends more than 182 days in Malaysia during an income year.¹⁹

Double taxation is currently discussed in most Australian tax law courses, but not in any depth.²⁰ The above discussion of the residence tests can set the scene for discussion to take place around a concrete example, as well as about the issue generally.

In the case of Malaysia, double taxing may happen if the person was a resident under Australian law on the basis of a number of qualitative factors, despite spending sufficient days in Malaysia to qualify as a resident of Malaysia. Students would be better able to conceptualise the idea of double taxation, and how it might be resolved, with such an example. The teacher could show students appropriate sections from the Malaysia–Australia Double Tax Agreement

17 See, for example, Woellner et al, *Australian Taxation Law* (20th ed, 2010) 1476–8; Coleman et al, *Principles of Taxation Law* (2009) 39–42.

18 See, eg, Woellner et al, above n 17, 1489.

19 *Income Tax Act 1967* (Malaysia) s 7.

20 See, eg, Woellner et al, above n 17, 1,481–2; Coleman et al, above n 17, 46.

(MADTA)²¹, which is similar to many double tax agreements developed in accordance with the OECD Model Treaty. Article 14(1) of the MADTA states that a resident of one country (say Australia) who renders personal services in the other country (say Malaysia) will be taxable in the other country (Malaysia) on remuneration from the performance of services in the other country (Malaysia). The country of residence (Australia) may also tax the income if it uses the worldwide basis, or the remittance basis. If taxed in both the country of residence (Australia) and the country where the services are performed (Malaysia), a foreign tax credit may be applicable. Under its foreign tax credit system, Australia will grant a credit to an Australian resident for Malaysian tax paid on Malaysian source income, offsetting the Australian tax payable on that income.²²

This discussion provides an opportunity for existing tax materials relating to the source of income to also be updated. Existing materials usually explain that Australia uses the worldwide system of taxation. Residents are taxed on all sources of income, wherever that source is. For example, Australian residents have to pay tax in Australia on income that has a Malaysian source.²³ Students' understanding that different countries have different systems of charging tax is likely to be greater if the Australian system is compared with a different system. For example, Malaysia uses the derived and remittance system, where residents are taxed only on income derived from Malaysia or remitted into Malaysia. Residents of Malaysia are not assessable by Malaysia on income that has a source in Australia, if it is not remitted to Malaysia.²⁴

Tax textbooks currently discuss Australian laws relating to many types of income; for example, employment and services income, business income and investment income.²⁵ It should be sufficient to compare the Australian and foreign law for just one of these sources of income to give students an idea of how another country's laws interact with Australian law.²⁶

Employment and services income is an appropriate source of income to base a discussion around, as it is most relevant to law students who may wish to travel to work in another country in the future. In the case of Malaysia, under the common law both there and in Australia, the source of remuneration for services rendered is generally regarded as the place where the services are performed. However, the contract of employment becomes relevant for the purposes of establishing where the employment is to be rendered; for example, if the employee is required to perform services both inside and outside Malaysia. If the employee had, for instance, not contracted to render services outside Malaysia, but then did so, their income would be attributed to a Malaysian source, providing that the employment was substantially exercised in Malaysia and that the employee rendered services outside Malaysia which were causal or incidental to the Malaysian services.²⁷

IV. STEP 3: ASSESSING STUDENTS ON KNOWLEDGE GAINED

The above discussion outlines and provides an example of how curriculum materials can be modified to incorporate an international perspective to the study of law. However, merely inserting materials regarding another country's legal system into the law curriculum would not in itself give students a proper opportunity to understand the manner in which another country's laws operate, or the ramifications of those laws. Deeper learning can be gained through a task which is then assessed to establish what students have learned.²⁸ A suggested approach is to assess students on how they apply these skills in writing a letter of advice to a hypothetical

²¹ *International Tax Agreements Act 1953* Schedule 16.

²² *International Tax Agreements Act 1953* Schedule 16 Article 23(3)(a).

²³ *Income Tax Assessment Act 1997* (Cth) ss 6–5. The worldwide tax system is explained in Ault and Arnold, above n 9, 6.

²⁴ *Income Tax Act 1967* (Malaysia) s 3.

²⁵ See, for example, Woellner et al, above n 17, 1493–1501 and Coleman et al, above n 17, 51–4.

²⁶ Teachers are unlikely to have the time to discuss the foreign country's tax laws relating to all sources of income, although perhaps they might like to alternate which source of income to vary the discussion in different semesters.

²⁷ *Income Tax Act 1967* (Malaysia) s 13.

²⁸ Biggs and Tang discuss deep versus surface learning in John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (3rd edition, 2007) 22–9.

client. This would involve advising the hypothetical client about overseas laws. In a real-life situation, a client wanting to know about overseas laws may also display cultural differences. Before students interview and advise their hypothetical client, the teacher could facilitate discussion about what might be some cultural differences to consider.

V. STEP 4: FACILITATING A DISCUSSION OF CULTURAL DIFFERENCES

Having a discussion about cultural differences that students might experience will enhance their communication skills. According to Pauwels, '[c]ommunication in a society characterised by ethnic, cultural and linguistic diversity is susceptible to difficulties and breakdown'.²⁹ Students need to be aware that, when they deal with people in a professional context, cultural differences can result in misunderstandings. In an article about the interviewing method employed by lawyers to aboriginal female clients, Diane Eades wrote that '[t]he mere fact that we appear to share a language with someone does not mean that we have the same norms for using and interpreting language'.³⁰ If students are aware of cultural difference they are more likely to be sensitive to their clients, and misunderstandings between clients and their future lawyers are less likely to arise.

In this context, teachers need to consider what cultures students are likely to come into contact with when choosing a topic to discuss with students. For example, the Chinese culture is relevant as China is one of Australia's significant trading partners. Blay et al have written that 'China is the next economic giant of the 21st century'.³¹

To facilitate a discussion about cultural difference and communication, the teacher could first discuss with students why it is important to have an understanding of different cultures. If an Asian country is chosen as the comparative culture, students could be given a copy of an article by Reisinger and Turner,³² which highlights that Australia has a large percentage of visitors from the Asian region.

Advantage could be taken of the fact that students in the classroom are from a variety of cultural backgrounds. Students could be encouraged to work in pairs and to ask each other questions such as these:

- What is culture?
- What is your culture?
- What is your culture's social structure?
- What is the role of family in your culture?
- Have you been to another country? If so, how did you feel?
- What is your experience of other cultures in Australia?
- When was a time when you found another person's culture very different?
- Why is it important to have an understanding of different cultures?
- What are some of the challenges in dealing with other cultures?
- How can we deal with these?
- How might you be exposed to other cultures in your future working lives?

29 Anne Pauwels, 'Cross-Cultural Communication in Medical Encounters' (Working Paper No 4, National Centre for Community Languages in the Professions, Monash University, 1991) 5.

30 Diane Eades, 'Lawyer-Client Communication: "I Don't Think the Lawyers Were Communicating with Me": Misunderstanding Cultural Differences in Communicative Style' (2003) 52 *Emory Law Journal* 1126. Some examples are also discussed in this article of some cultural assumptions often made in western society such as that '[s]ilence in answer to an accusation indicates guilt': at 1127. Eades then compares these assumptions to some cultural assumptions which she suggests are widely held in Aboriginal societies, such as that '[p]eople who use silence should be respected for their thoughtfulness and their recognition of the value of time': at 1127.

31 Blay et al, 'Teaching Note: Adventures in Pedagogy: The Trials and Tribulations of Teaching Common Law in China' (2005) 15 *Legal Education Review* 167. Further, Irene Y M Yeung and Rosalie L Tung have written that '[i]n light of the remarkable economic transformation that has taken place in East and Southeast Asia in the past several decades, there is a consensus among government and business leaders that significant business opportunities will abound in this region': Irene Y M Yeung and Rosalie L Tung, 'Achieving Business Success in Confucian Societies: The Importance of Guanxi (Connections)' (1995) 25 *Organizational Dynamics* 54.

32 Yvette Reisinger and Lindsay Turner, 'Cultural Differences between Mandarin-Speaking Tourists and Australian Hosts and Their Impact on Cross-Cultural Tourist-Host Interaction' (1998) 42 *Journal of Business Research* 175.

A variety of sources can be used to help the teacher discuss cultural differences between Australia and the chosen country which may be relevant to an Australian lawyer advising a hypothetical client. Students can benefit from a person of the chosen culture discussing their culture with the students (this could be one of the students who is from that culture). Emphasis can also be placed on reliable written sources regarding the culture, such as some of the sources discussed below.

Factors such as ‘integration’ and ‘harmony with others’ have been identified as important to the Chinese culture by commentators such as Connection.³³ Reisinger and Turner describe a culture of people who ‘[a]re socially and psychologically dependent on others. They give support for parents, tradition, duty and obligations.’³⁴ Chen and Li describe how ‘[o]ne of the dimensions that differentiates the Chinese and Australian cultures is individualism–collectivism ... Australians ... are more individualistic ... the Chinese ... are more collectivist.’³⁵

Also, regarding the Chinese culture, Connection has explained that characteristics such as ‘human-heartedness’, ‘kindness’, ‘patience and courtesy’ are also important parts of this culture.³⁶ Similarly, Reisinger and Turner describe that ‘[t]he Chinese are more situation-oriented and concerned with appropriate behavior.’³⁷ They also explain that generally in the Chinese culture conflict and disagreement are to be prevented, and:

[i]t is critical not to offend or harm anyone ... ‘Saving one and other’s face’ means being polite, courteous, considerate, understanding, well-mannered, moral and humble. Failure to preserve face means losing social status, reputation, and bringing humiliation on the family.³⁸

Reisinger and Turner also describe that:

[a] very important aspect of life in Mandarin-speaking societies is the ability to develop and maintain positive human relationships. Personal relationships are very carefully cultivated. These include social interpersonal relationships, meetings and appointments. Society is supposed to hold together.³⁹

This range of differences between Australian and Chinese culture exemplifies why it is important for students studying in Australia to understand that clients might display elements of a culture other than their own and that it is important to be sensitive to these differences. While such a topic can become immersive, only a few brief articles should be given to students about the chosen culture, so as not to overwhelm them with ‘paperwork’ and so that the discussion can fit within the curriculum’s time constraints.⁴⁰

Students could practise what they have discussed with an exercise in which they have to interview and advise a hypothetical client, from the chosen culture. The students could also do this by email or in a role-play advice session where an actor plays the client role.

33 T C C Connection, ‘Chinese Values and the Search for Culture-Free Dimensions of Culture’ (1987) 18 *Journal of Cross-Cultural Psychology* 150.

34 Reisinger and Turner, above n 32, 177.

35 X P Chen and S Li, ‘Cross-National Differences in Cooperative Decision-Making in Mixed-Motive Business Contexts: The Mediating Effect of Vertical and Horizontal Individualism’ (2005) 36 *Journal of International Business Studies* 623–4. Regarding what individualism and collectivism mean Hue and Triandis (in press) asked a sample of anthropologists and psychologists from all parts of the world what they understood these terms to mean. The respondents of the survey gave weight to the following themes: individualism: ‘Individual regulation of behavior’, ‘self-sufficiency’, ‘ingroup and personal goals are unrelated’, ‘confrontation with ingroup may be good’. Collectivism: ‘ingroup regulation of behaviour’, ‘interdependence’, ‘Subordination of personal goals to goals of ingroup’, ‘ingroup harmony is important’. Harry C Triandis et al, ‘Allocentric Versus Idiocentric Tendencies: Convergent and Discriminant Validation’ (1985) 19 *Journal of Research in Personality* 397.

36 Connection, above n 33, 150.

37 Reisinger and Turner, above n 34, 177.

38 Ibid 184.

39 Ibid.

40 Within an elective subject, the sort of content discussed in this paper could be delved into in more detail.

VI. STEP 5: PREPARING STUDENTS TO INTERVIEW A HYPOTHETICAL CLIENT

From the literature, discussed above in step 4, a hypothetical client for the students to advise can be constructed. For instance, students might be told that a hypothetical Chinese client would need to check with, or seek instructions from, family members and might come across as reluctant to disagree or say no.⁴¹

Before students interview their hypothetical client, they should be prepared for the task. This will give students an opportunity to seek feedback on their understanding before the assessment takes place. Materials given to students about interviewing clients should explain the background to client interviews and how lawyers are given instructions by clients to act for them. Information should include the relevant facts, and the objectives to be achieved by the assessment. The materials should also explain that the lawyer's task is to ascertain and act upon the factual instructions given. A guide to how notes of interviews should be taken would also be useful to replicate the practice environment where a case file may need to be passed on to another lawyer on the matter.

The Oklahoma Bar Association website⁴² contains useful information about the initial client interview, including that the client may feel anxious and that it is important for a lawyer to listen and to avoid legal jargon. Students could be encouraged to spend about 10 minutes in class doing pair work. They could practise letting their partner speak (as a client) without interruption. Then they could discuss in the larger class group how they felt undertaking the task.

Teachers following this design could also give students a short handout from the *Lawyer's Practice Manual*⁴³ about the importance of making the client feel comfortable in face-to-face interviews and the importance of asking open-ended questions that are less likely to get a yes/no response. In class, students could be given time to practise asking open-ended questions in their pairs.

Something else that may be useful to students is a short one-page article, 'The First Interview'.⁴⁴ It is about making the client feel comfortable, listening and questioning, advising and things to do after the interview. Reading this article could help to reinforce what students have learned about interviewing clients. The task of reading and summarising this article could be split up so that each student or group summarises a few main points.⁴⁵

In support of these in-class activities, Hoeke and Warrington have advocated a move away from the 'law as rules' concept of teaching law to argue that learning about the law involves much more than listening to lectures and reading about statutory rules and judicial decisions.⁴⁶ O'Brien has said that students learn best when applying what they are learning.⁴⁷

41 However it is also wise to discuss that no two people are the same and that it is difficult to generalise in any cultural discussion. For instance, reference could be made to Ming-Jer Chen, *Inside Chinese Business: A Guide for Managers Worldwide* (2001) 2–3 in which it is discussed that many Chinese people have migrated from China to Hong Kong, Taiwan, and throughout most southeast Asian countries and many countries of the world. There are 56 ethnic groups in China, 200 dialects in use, eight major cuisines and there were four radically different political systems in the last century.

42 Jim Calloway, *Management Assistance Program* (2002) Oklahoma Bar Association <<http://www.okbar.org/members/map/articles/interview.htm>> at 23 January 2011.

43 Springvale Legal Service, *Lawyers Practice Manual* (2009) 3–6.

44 'The First Interview' (2002) 22(4) *Proctor* 26.

45 Another task for students, related to interviewing clients, could be one to determine which facts the client talks about are the important ones. In this regard the following book has a useful exercise: Bobette Wolski, *Skills, Ethics and Values for Legal Practice* (2009) 142–71.

46 M V Hoeke and M Warrington, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law' (1998) 47 *International and Comparative Law Quarterly* 496.

47 R O'Brien, *An Overview of the Methodological Approach of Action Research* (2001) <<http://www.web.net/~robrien/papers/arf.html>> at 23 January 2011.

VII. STEP 6: PREPARING STUDENTS TO ADVISE A HYPOTHETICAL CLIENT

Once lawyers have interviewed a client, they generally give the client their advice. After facilitating a discussion about interviewing, teachers should go on to talk to students about how to advise a client. While advising a hypothetical client is not unique to this model, it is a good way to facilitate the application of what they have learned. Students will gain deeper knowledge by thinking about how to advise the client that they have interviewed.

To develop ideas and share knowledge, the teacher could divide students into small groups and ask each group to draw a 'Y-chart' on a large poster. A Y-chart is a large circle with a Y in the middle creating three sections. The students would fill in each of the three sections with dot points.⁴⁸ Students could write in one section what they think the aims of a letter of advice are. In the second section they could write who they think the recipients of a letter of advice are. In the third section students could write what might be included in a letter of advice. Students could discuss their thoughts first within their groups, and then present their Y-charts to the class.

The teacher could then discuss with students what some commentators have had to say about writing letters of advice. Students could be encouraged to summarise the main points of the article, *Guide to Legal Letter Writing*.⁴⁹ This article discusses the aims of a legal letter and some of its main features. The format of a letter of advice is discussed in a short two-page article called 'advice letters'.⁵⁰ Students could be encouraged to work together to summarise one of the eight sections of this article, then present the main points to the class.

The 'think pair share' strategy could be used to facilitate the students reading and discussing a section of the *Lawyers Practice Manual*⁵¹ about plain English drafting. Implementing this strategy would involve students reading the section and thinking about it themselves first. Then students could form pairs to discuss why it is important to write clear and effective letters. They could report back to the class about this.⁵² Feedback from the author's use of such a strategy in class was that it 'should be done regularly ... Good for learning and getting students involved', that '[i]t stimulates discussion and clarifies points', and that it was 'useful. A variety of views from different members'.

Students could be encouraged to read the book chapter 'Chapter 4: Writing and Drafting'.⁵³ This outlines a number of dos and don'ts, such as 'don't use legalese' and 'do not use unnecessary words'. Students could be split into two groups. One group could be asked to make a poster summarising the dos, the other group could make one outlining the don'ts. The two groups could then be encouraged to present these posters to the class. There is also an exercise in this chapter⁵⁴ where students are encouraged to rewrite a paragraph in short sentences. Students could be encouraged to do this individually in class. The teacher could select a few of the rewritten sentences to share with the class. There is also an example of a 'bad' letter.⁵⁵ Students could be encouraged to suggest how this letter could be improved.

Students could also be given a photocopy of relevant pages of the book *Drafting Effective Legal Advice*.⁵⁶ Examples are given in this book of how writing can be simplified. For instance,

48 For further information about Y-charts see: ShirleyPaulk (2011) <<http://wwwfp.education.tas.gov.au/english.ycharts.htm>> at 27 January 2011.

49 Jennifer Corrin-Care, *Guide to Legal Letter Writing* (2003) The University of the South Pacific <http://www.vanuatu.usp.ac.fj/student_resources/Resources_Main/legal_letters.html> at 23 January 2011.

50 L H Edwards, *Legal Writing and Analysis* (2007) 150–1.

51 Springvale Legal Service, *Lawyers Practice Manual* (2009) 37. There is also a chapter in the following book about plain English drafting: S Barber, *Legal Writing for Paralegals* (2nd ed, 1997). Students could be encouraged to read this at home. They could share their ideas in the next class while the teacher writes the students' ideas on the board. The person who shares the most ideas could 'win' a prize, and the teacher could extend the discussion of the ideas on the board.

52 For further information about the TPS strategy see Department of Education, Tasmania, School Education Division, *Think-pair-share* (2009) <<http://www.education.tas.gov.au/curriculum/standards/english/english/teachers/thinkpair>> at 27 January 2011.

53 R Hyams, S Campbell and A Evans, *Practical Legal Skills* (3rd ed, 2007) 60–72.

54 Ibid 62–3.

55 Ibid 71–2.

56 J Doherty, *Drafting Effective Legal Advice* (2009) 1–16.

using the words ‘cars’ or ‘trucks’ rather than ‘vehicles’. Students could be encouraged to keep this in mind when writing their letter of advice. They could also be shown examples from this book of letters written to a ‘sophisticated client’ and an ‘unsophisticated client’.⁵⁷ The provision of these sample letters would aid students in understanding what they are expected to write as part of the assessment.⁵⁸

VIII. STEP 7: THE ASSESSMENT ACTIVITY

The following assessment activity has been designed to give students practical experience in applying what they are learning. It is an opportunity for them to gain feedback from the teacher on their skills in providing advice to a hypothetical client. This client could display elements of another culture discussed in the course. He or she may ask for information which requires the students to apply the law of Australia as well as the law of the other country that the students have learned about.

If it is not possible to organise for someone to ‘act’ as the client, students could be asked to communicate with the hypothetical client (the teacher) through email. Teachers could send students an email from the students’ hypothetical secretary informing them of a new client. The email could state that the secretary has received a call from someone wanting advice from the student. There could be some brief details about the client in the email. These might include that the client was born in mainland China (and therefore may display elements of the Chinese culture), but has lived in Australia for a significant period of time (and therefore may be subject to Australian tax laws). The client could be thinking of going to Malaysia to work, and might like some advice on whether he will have to pay tax in both Australia and Malaysia.

Two opportunities to email the client with questions and receive the client’s responses would allow an appropriate opportunity for students to gain more information about their client so as to advise effectively. This might also expose the students to cultural differences. For instance, the Chinese concept of saving face ‘mianzi’, discussed above in step 4, might mean that the client may be reluctant to tell the student too much information. Since family is perceived to be important to the Chinese culture, the client might defer to his family, and tell the student that he or she will have to seek his family’s advice about what the student has had to say. Based on the hypothetical client’s information, the students could then write the client a letter of advice.

If large class size is an issue, the communication from the hypothetical client might need to be standardised. Students could be asked to form groups and write one letter on behalf of their group. There are sound pedagogical arguments supporting such an approach. Hewitt has noted that ‘[r]equiring students to work in groups can allow them to develop skills such as teamwork, cooperation, time management, delegation and people management.’⁵⁹ Further, Keyes and Burns have written that

[e]ven if students do not explicitly teach each other skills and content, the approaches which they take to learning provide important modeling to other students. ... Working with others inevitably requires that one learn to give feedback to and receive feedback from one’s peers.⁶⁰

In this model, working in groups has these benefits as well as underlining the exercise in cultural differences by developing teamwork and exposing students to a range of approaches to the task.

⁵⁷ Ibid 7–10.

⁵⁸ When I asked my students if they were to write a letter of advice as part of an assessment what supporting materials they would like, they suggested templates and examples of a letter of advice.

⁵⁹ Anne Hewitt, ‘Producing Skilled Legal Graduates Avoiding the Madness in a Situational Learning Methodology’ (2008) 17(1) *Griffith Law Review* 90.

⁶⁰ Mary Keyes and Kylie Burns, ‘Group Learning in Law’ (2008) 17(1) *Griffith Law Review* 360.

IX. STEP 8: STUDENTS REFLECTING ON THE EXPERIENCE GAINED

In order to maximise what students learn from the assessment they should be encouraged to reflect on their experience in class discussion.⁶¹ Teachers could ask students about their thoughts regarding the cultural differences that they have experienced when dealing with the hypothetical client. Students could also be asked to discuss how issues regarding the cultural differences may potentially be overcome. For example, a discussion could take place about how it is important when dealing with people of different cultures and backgrounds to show respect, avoid clichés, repeat important facts and avoid ambiguous language.

X. STEP 9: A MODEL ASSESSMENT RUBRIC

A rubric, or criterion-referenced assessment sheet, has been developed to assist teachers following this design to mark the students' assessment tasks. It is contained in the Appendix to this paper. The possible marks to be awarded to the student are listed along the top, and several criteria are listed along the side in the manner documented by Oakleaf.⁶²

Barron and Keller discuss the advantages of using a rubric which can be used to explain to students '[t]he criteria against which their work will be judged. More importantly it makes public key criteria that students can use in developing, revising and judging their own work.'⁶³ Oakleaf has written that '[b]y making instructor expectations clear, rubrics make rankings, ratings and grades more meaningful'.⁶⁴ Handley-More has further suggested that rubrics assist students in self-assessing their own work.⁶⁵ Burton and Cuffe say that if rubrics are given to students before they submit their assessment, then they can be used to encourage students, '[t]o become familiar with the assessment details and requirements.'⁶⁶ This enables teachers to be freed from claims of unfair treatment or of not explaining what was required for an assessment task.

Teachers following this model should, therefore, spend time in class early in the semester discussing the assessment rubric with students, so that they understand what is required of them.

The Australian Learning and Teaching Council, in conjunction with the Council of Australian Law Deans, has recognised the application of topic knowledge and communication theory as an important criteria to use in assessing students.⁶⁷ The rubric in the Appendix goes one step further and suggests how many marks should be given to each of these two objectives, what components of these objectives should be assessed and what a student needs to do to get any of the grades, from fail to high distinction, for each of these components.

It is suggested that students should be marked out of 15 for their application of topic knowledge and out of 10 for their application of communication theory. When students complete the subject they should be able to demonstrate their understanding of the content of the course. Therefore, with regard to topic knowledge, students should be assessed on whether they have:

- appropriately identified the issues that the hypothetical client is seeking advice on;
- identified the appropriate law to apply; and

⁶¹ van den Berg, Admiraal and Pilot have reported that 'students learn from peers': Ineke van den Berg, Wilfried Admiraal and Albert Pilot, 'Peer Assessment in University Teaching: Evaluating Seven Course Designs' (2006) 31(1) *Assessment and Evaluation in Higher Education* 19.

⁶² This is the traditional way of setting up a rubric as described in Megan Oakleaf, 'Using Rubrics to Assess Information Literacy: An Examination of Methodology and Interrater Reliability' (2009) 60(5) *Journal of the American Society for Information Science and Technology* 969.

⁶³ J Baron, and M Keller, 'Use of Rubrics in Online Assessment' (Paper presented at the Evaluations and Assessment Conference, Adelaide, South Australia: University of South Australia, 24-25 November 2003) 4.

⁶⁴ Oakleaf, above n 62, 969.

⁶⁵ Dottie Handley-More, 'Collaboration and Connections' (2008) 1 *Journal of Occupational Therapy, Schools and Early Intervention* 25.

⁶⁶ K Burton, and n Cuffe, 'The Design and Implementation of Criterion-Referenced Assessment in a First Year Undergraduate Core law Unit' (2005) 15 *Legal Education Review* 163.

⁶⁷ Australian Learning and Teaching Council and CALD, Susanne Owen and Gary Davis, *Project Final Report: Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (2009) B26.

- appropriately applied the law to the facts of the client's situation.

In regard to communication theory, students should be marked on:

- using appropriate ways to communicate with a client displaying cultural differences;
- their written expression; and
- writing an appropriate letter.

XI. CONCLUSION

A greater international perspective needs to be applied in the teaching of law subjects. This is necessary to prepare students for their future careers. Students need to be taught skills in both dealing with clients and colleagues who display cultural differences, and in answering questions regarding international legal issues. In this paper, a model has been presented for doing this. As discussed, one way of adding an international perspective to a law curriculum is to introduce a discussion of another country's laws. Course materials need to be modified accordingly, so that they provide a comparative perspective. This can also lead to a discussion about the cultural differences that students might experience in dealing with clients.

A framework for assessing students on the knowledge that they have gained has also been offered. Students should be prepared by the teacher to interview and advise a hypothetical client who is from a different culture and who is asking about international legal issues. Students can then be assessed with reference to the model assessment rubric provided.

APPENDIX I. ASSESSMENT RUBRIC

	High Distinction (80–100%)	Distinction (70–80%)	Credit (60–70%)	Pass (50–60%)	Fail (below 50%)
Topic knowledge (out of 15)					
Issues identified appropriately	All of the issues were identified appropriately with reference to authority.	Most of the issues were identified appropriately	Some of the issues identified, but perhaps not fully or with reference to authority.	Some attempt to identify issues, which is marginally appropriate.	Appropriate issues not identified.
Relevant required knowledge identified, referring to appropriate authority for statements.	All knowledge identified and supported by relevant authority.	The majority of relevant knowledge identified, and most statements supported by relevant authority.	Some of the relevant knowledge is identified and supported by authority.	Limited identification of required knowledge. Not well supported with authority.	An inappropriate attempt was made to identify required knowledge.
Knowledge applied appropriately to the facts	The required knowledge was linked to the facts very appropriately.	A good effort was made to link the required knowledge to appropriate facts. Most of the time this was done appropriately	An adequate attempt was made to link required knowledge to appropriate facts. This was not done as fully as it could have been.	Some attempt was made to apply the required knowledge to the facts but there was not enough detail in the letter. There is a need for more emphasis on stating the law or the facts and linking the two.	An inappropriate effort was made to apply the required knowledge to the facts.
Application of communication theory (out of 10)					
Appropriate methods were used to deal with cultural differences.	An excellent attempt was made to identify and deal with all of the cultural differences faced. This was done appropriately.	A good effort was made to identify and deal with the majority of cultural differences faced. This was done appropriately most of the time.	An attempt was made to identify and deal with some of the cultural differences. However this was not always done in the most appropriate manner.	Some adjustments made to try to deal with the cultural differences faced. However only a small proportion of the cultural differences were addressed.	Appeared not to identify being faced with cultural differences, and to make adjustments for this.

	High Distinction (80–100%)	Distinction (70–80%)	Credit (60–70%)	Pass (50–60%)	Fail (below 50%)
Clarity of written expression, use of plain English, professional tone, proof-read.	Very well- written and appropriate letter.	The majority of the time the letter was well-written. Most was in plain English, the tone was appropriate, and the letter proof-read.	English expression was acceptable. However there is room for improvement in clarity, simplicity or tone.	English expression was just acceptable. Was sometimes unclear. Sentences not expressed as simply as they could have been. The tone was not always appropriate.	English expression was clearly not appropriate. The sentences were unclear and/or convoluted. The words used were too casual. The paper was not proof-read.
<i>Letter well formatted, including use of firm letterhead, references, date, name and address, salutation, subject line, summary of instructions, The student provides opportunity for questions from the client and summarises the advice.</i>	An excellent attempt was made to format the letter in a very professional manner.	The letter was mainly formatted in a professional and appropriate manner.	Most of the requirements of a well formatted letter were adhered to. However the letter is still lacking in some respects. For instance, not summarising the advice at the end, or providing an opportunity for questions. It also might not confirm what the next step is.	Some of the requirements of a well formatted letter have been adhered to.	The letter format is inappropriate and unprofessional.